

SEP 14 2005

BEFORE THE FEDERAL ELECTION COMMISSION

2005 SEP 14 P 4: 38

In the Matter of

Laidlaw International, Inc., f/k/a Laidlaw Inc.  
Laidlaw Transit, Inc.  
American Medical Response, Inc.

MUR 5375

**SENSITIVE**

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Take no further action regarding Laidlaw International, Inc. ("Laidlaw"), Laidlaw Transit, Inc. ("Laidlaw Transit"), and American Medical Response, Inc. ("AMR") and close the file in MUR 5375.

II. BACKGROUND

This matter involves allegations that AMR, a subsidiary of Laidlaw, used bonus payments to reimburse employees for political contributions.<sup>1</sup> An article attached to the complaint from *U.S. News & World Report* reported that Laidlaw's outside counsel, Jones, Day, Reavis & Pogue ("Jones Day"), conducted an internal investigation of AMR's campaign finance activities, which examined \$75,000 in contributions made by AMR employees between 1995 and 2001 and found that some AMR employees who contributed to federal campaigns received bonus payments from a "supplemental compensation plan."<sup>2</sup> The article purported to quote a report of the investigation

<sup>1</sup> AMR is an indirect subsidiary of Laidlaw and, prior to 2002, was a direct subsidiary of Laidlaw Transit. Laidlaw purchased AMR in 1996 and merged the company with its ambulance subsidiary, MedTrans, in 1997 as part of an industry trend toward consolidation. See History of AMR, at <http://www.amr.net/company/history.asp> (last visited May 25, 2005). Prior to Laidlaw's petition for Chapter 11 bankruptcy in June 2001, which prompted the company to conduct an extensive audit of its operations, AMR operated through approximately six regional offices headed by a Regional CEO, with little oversight from its corporate parent. See MUR 5375, Memorandum to File (Feb. 10, 2004). Each AMR regional office was organized into operational divisions headed by a Vice President of Operations. See, e.g., 1999 Supplemental Compensation Plan Recommendations, ASC0010041-42.

<sup>2</sup> See Compl. Ex. 1 (Megan Barnett, *Meet Mr. Fixit*, U.S. NEWS & WORLD REPORT, May 5, 2003).

1 prepared by Jones Day as stating that, although the employees denied that their donations were  
2 linked to bonus payments, "there is a risk that a prosecutor would conclude that [plan] funds are  
3 used for illegal purposes." According to the article, Jones Day advised Laidlaw not to disclose  
4 the report's findings to the Commission, stating, "the potential harm to the corporation resulting  
5 from voluntary disclosure significantly outweighs the perceived benefits associated with  
6 governmental disclosure." The Laidlaw Board voted to follow this advice on December 17,  
7 2001.

8 The Commission found reason to believe that Laidlaw, Laidlaw Transit, and AMR  
9 knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f and authorized the use of  
10 compulsory process in this matter. While the Commission based its reason to believe findings  
11 primarily on the information in the news article attached to the complaint, it also considered  
12 information from disclosure reports suggesting similarities in the number, amount and timing of  
13 contributions by AMR employees to the American Ambulance Association PAC (AMBU-PAC),  
14 as well as the failure of Laidlaw and its subsidiaries to refute the substantive allegations in the  
15 complaint.<sup>3</sup>

16 Pursuant to the authorization of compulsory process in this matter, the Commission  
17 issued Subpoenas and Orders to Laidlaw, Laidlaw Transit and AMR requesting, *inter alia*, all  
18 documents regarding the bonus plan and the potential reimbursement of political contributions  
19 made by employees. In particular, the Subpoenas and Orders requested all documents relating to

<sup>3</sup> In its response, Laidlaw did not address the allegations that AMR had used bonus payments to reimburse contributions, but instead argued that its Chapter 11 bankruptcy reorganization limited any Commission investigation relating to actions committed prior to bankruptcy, and that the news article on which the complaint relied was not material evidence and, thus, did not satisfy the reason to believe standard. As discussed in the First General Counsel's Report, these arguments were unsupported by caselaw and did not foreclose a Commission investigation or enforcement action. See MUR 5375, Laidlaw Resp. at 1-2; First General Counsel's Report dated Nov. 26, 2003, at 6-12.

1 the internal investigation of the bonus plan, including a copy of the audit report prepared by  
2 Jones Day, as well as minutes for the Laidlaw Board meeting at which members voted not to  
3 disclose the results of its investigation to the Commission. Respondents received the Subpoenas  
4 and Orders on January 12, 2004. Although they did not file Motions to Quash under 11 C.F.R.  
5 § 111.15, Respondents refused to comply with the Subpoenas and Orders issued by the  
6 Commission.

7 In early February 2004, James Wareham and James Anklaam of Paul, Hastings, Janofsky  
8 & Walker ("Counsel") requested a meeting with this Office to discuss their objections to the  
9 investigation generally and, in particular, to the Commission's issuance of Subpoenas and  
10 Orders. In a meeting on February 6, 2004, Counsel asserted that the Laidlaw's bankruptcy filing  
11 in June 2001 barred any investigation or enforcement action against Laidlaw or Laidlaw Transit  
12 on the basis that these proceedings would constitute pre-petition claims.<sup>4</sup> As to AMR, which was  
13 not included in Laidlaw's bankruptcy petition, Counsel represented that the audit report prepared  
14 by Jones Day was stolen from Laidlaw and argued that, as a result, the Commission's  
15 investigation was invalid in its entirety because it was based on a "purloined privileged  
16 communication."<sup>5</sup>

<sup>4</sup> See MUR 5375, Memorandum to File (Feb. 10, 2004).

<sup>5</sup> See *id.*

1 **III. RESULTS OF THE INVESTIGATION**

2 **A. Creation and Operation of the Supplemental Compensation Plan**

3 AMR established its supplemental compensation plan ("SCP") in 1997 and began bonus  
4 payments under the plan in fiscal year 1998.<sup>10</sup> George DeHuff, the CEO of AMR at that time,  
5 began the bonus program to reward involvement in community organizations and government  
6 affairs beyond an employee's standard workweek, such as attendance at fundraisers for a local  
7 hospital or participation in committees of the American Ambulance Association, the industry's  
8 trade association.<sup>11</sup> Only managers at the division Director of Operations level or higher were  
9 eligible for SCP payments.<sup>12</sup>

10 AMR issued SCP Guidelines each year, establishing the bonus amounts and number of  
11 employees eligible to receive bonuses.<sup>13</sup> Based on these guidelines, Region CEOs recommended  
12 bonus recipients and sent the recommendations to AMR's former Chief Operating  
13 Officer. reviewed the bonus recommendations and put together a spreadsheet of  
14 recommended bonus recipients, occasionally consulting with AMR's Vice  
15 President of Government Affairs. According to he knew most of the employees  
16 recommended for bonus payments from travel and previous recommendations, but he questioned  
17 the Region CEOs about the community involvement of any employees he did not know.<sup>14</sup>  
18 then presented the spreadsheet to AMR's CEO, who was responsible for final approval

<sup>10</sup> See Report of Investigation for at 2 ("ROI"). Because AMR's fiscal year is September 1 to August 31, fiscal year 1998 ran from September 1, 1997 to August 31, 1998.

<sup>11</sup> See ROI at 1-4; see also Report of Investigation for at 2 ("ROI"); Report of Investigation for at 2 ("ROI").

<sup>12</sup> See 2000 Supplemental Compensation Plan, ASC0010010-11.

<sup>13</sup> See, e.g., 2000 Supplemental Compensation Plan, ASC0010010-11; 1999 Supplemental Compensation Plan, ASC0010020-21; see also ROI at 4-5.

<sup>14</sup> See ROI at 5.

1 of the bonus payments.<sup>15</sup> In his interview,            stated that he never asked about employees'  
2 political activities or contributions or discussed these topics with the CEO.<sup>16</sup>

3 Documents produced to the Commission reveal that AMR had an explicit corporate  
4 policy prohibiting the reimbursement of federal and state political contributions.<sup>17</sup> In February  
5 1998, AMR distributed a corporate political donations policy to Region and Division CEOs,  
6 Corporate Vice Presidents, and Directors and Managers, which stated that AMR should not  
7 reimburse employee political contributions and that donations to federal officials or candidates  
8 could only be made with personal funds.<sup>18</sup> While AMR did not have a corporate compliance  
9 officer, relying instead on Laidlaw's corporate counsel for oversight on Medicare reimbursement  
10 and other regulatory issues, managers received a copy of the policy as part of AMR's corporate  
11 compliance book.<sup>19</sup>

12 B. Laidlaw's Internal Investigation

13 Laidlaw entered Chapter 11 bankruptcy on June 28, 2001.<sup>20</sup> To assist with its  
14 reorganization, Laidlaw brought in a restructuring specialist, who began an extensive audit of its  
15 operations.<sup>21</sup> As part of this audit, Laidlaw's Board of Directors formed committees to examine

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<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See AMR Corporate Government Relations and Political Donations Policies, ASC0100033-35; see also E-mail from Steve Murphy to Bill Pahl, Jun. 20, 2000, ASC0110006 ("Employee reimbursement for political contributions was not mentioned nor are they allowed.").

<sup>18</sup> See *id.* at ASC0100035.

<sup>19</sup> See ROI at 9

<sup>20</sup> See First General Counsel Report at 2.

<sup>21</sup> See MUR 5375, Memorandum to File (Feb. 10, 2004).

1 the operations of its subsidiaries, including a Health Care Committee chaired by Martha Hesse,  
2 who was responsible for investigating AMR's finances and operations.<sup>22</sup>

3 In the course of her review, Martha Hesse discovered e-mails from an AMR employee  
4 who appeared to request reimbursement for political contributions.<sup>23</sup> Based on this discovery,  
5 Hesse asked Peter Romatowski of Jones Day, which was hired as compliance counsel for  
6 Laidlaw in 1999, to conduct an internal investigation and prepare an audit report of its findings.<sup>24</sup>  
7 According to Counsel, the audit report examined the match-ups between the list of contributors  
8 and the list of employees who received bonus payments from the SCP, and found that many  
9 employees who made no political contributions received bonuses.<sup>25</sup> In addition, it reportedly  
10 found that bonus recipients who made contributions denied that their donations were linked in  
11 any way to the compensation plan.<sup>26</sup>

12 Indeed, a review of the documents submitted by AMR revealed the following e-mail,  
13 which raised questions about the potential reimbursement of contributions made by AMR  
14 employees.<sup>27</sup>

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<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See ROI at 16.

<sup>25</sup> See MUR 5375, Memorandum to File (Feb. 10, 2004).

<sup>26</sup> See Compl. Ex. 1 (Megan Barnett, *Meet Mr. Fixit*, U.S. NEWS & WORLD REPORT, May 5, 2003).

<sup>27</sup> E-mail to Jack Edwards, Jun. 19, 2001, ASC0110124, ASC0090028. Without waiving AMR's asserted privilege as to the audit report, Counsel suggested that this e-mail prompted Hesse to open the internal investigation of AMR's bonus plan.

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From: Tuesday, June 19, 2001 9:12 AM  
Sent: Edwards, Jack  
To:  
Subject: RE: Supplemental Compensation

Jack.  
We spent \$291 in 2000. Of the \$24 increase, \$15 went to the East, \$5 went to the S. Pacific and \$2 went to the South. \$2 went to the S. Pacific and \$2 went to the South. are contributors to the AAA PAC, and serve as sources when other monetary contributions are needed.

Regards,

-----Original Message-----

From: Edwards, Jack  
Sent: Monday, June 18, 2001 8:56 AM  
To:  
Subject: RE: Supplemental Compensation

the amounts seem higher than I first thought and why do we provide payouts to corporate folks(except ? thx

1  
2 This e-mail appears to justify to the then-CEO of AMR the payment of SCP bonuses to three  
3 employees at AMR's corporate headquarters on the basis that they made contributions to  
4 AMBU-PAC, also known as AAA-PAC. AMR's former  
5 Chief Operating Officer, administered the bonus program and received bonus payments of  
6 \$10,000 to \$35,000 between 1998 and 2001.<sup>28</sup> In 2000 and 2001, years in which  
7 received \$35,000 bonus payments, he made contributions to AMBU-PAC totaling \$1,000 and  
8 \$1,500. See Attachment C.

9 In his interview, denied that he had received or requested reimbursement for his  
10 political contributions. characterized the e-mail as a poor choice of words and a mistake,  
11 and asserted that his statement was inconsistent with his understanding of the purpose of the  
12 SCP.<sup>29</sup> According to the e-mail was motivated by his frustration that Jack Edwards,  
13 who became CEO of AMR in March 2001, was questioning the legitimacy of bonus payments to

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<sup>28</sup> See

<sup>29</sup> See *id.* at 15-16.

1 employees at corporate headquarters at a time when                    had been working hard to preserve  
2 the company's financial viability.<sup>30</sup> Although he admitted that the e-mail could be read as an  
3 attempt to use his contributions to AMBU-PAC to justify his bonus payment, he stressed that it  
4 was not his intent to do so and emphasized that AMR's internal investigation ultimately  
5 concluded that                    had done nothing illegal.<sup>31</sup> In addition, he maintained that other AMR  
6 employees did not believe that their contributions would be reimbursed.<sup>32</sup>

7            C.    Absence of a Relationship Between Bonus Payments and Contributions

8            Based on the documents submitted by AMR and contribution information from  
9 Commission disclosure reports, there is no correlation between the timing and amount of bonus  
10 payments and political contributions. In virtually every case, bonus payments significantly  
11 exceeded employees' aggregate annual contributions by several thousand dollars, even taking  
12 into account potential "grossing up" of bonus payments. See Attachments C-E. For example,  
13 one bonus recipient made a total of \$2,250 in quarterly contributions to AMBU-PAC between  
14 fiscal years 1998 and 2001, but received \$24,000 in payments from the SCP during that time  
15 period. See Attachment C at 4. Even when considered by calendar year, rather than fiscal year,  
16 there was no relationship between the timing and amount of bonuses and contributions. See  
17 Attachment E. Additionally, many AMR employees received bonuses for years in which they  
18 made no federal contributions.

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<sup>30</sup>        See *id.*

<sup>31</sup>        See *id.*

<sup>32</sup>        See *id.* at 18. Jack Edwards substantiated the statements made by                    explaining that he met with  
          after receiving the e-mail cited and, based on that conversation, was satisfied that the purpose of the SCP was  
to reward community interaction above and beyond what is expected. See Report of Investigation for Jack Edwards  
at 4-5 ("Edwards ROI").



Interviews of current and former AMR employees support the conclusion that no correlation existed between bonus payments and contributions. Although AMR employees made numerous contributions to AMBU-PAC, the political committee of the American Ambulance Association ("AAA"), the ambulance industry's trade association, during the time period in which the alleged reimbursement of contributions occurred, the employees interviewed convincingly explained that the number and amount of contributions to AMBU-PAC was the result of their involvement in the trade association rather than the reimbursement of contributions through bonus payments.<sup>33</sup> The employees interviewed denied that they had received reimbursement for these or any other contributions and asserted that there was no understanding that political contributions would be taken into account in determining bonus payments.<sup>34</sup>

#### IV. ANALYSIS

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with a federal election. *See* 2 U.S.C. § 441b(a). The Act also provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f.

The evidence uncovered during the investigation does not establish that AMR reimbursed employee contributions through its bonus program in violation of 2 U.S.C. §§ 441b and 441f. As discussed above, the investigation produced no documentary or testimonial evidence that contributions by AMR employees were reimbursed, and there was no correlation between the

<sup>33</sup> *See* Report of Investigation for ROI at 7. at 3 ("ROI"); ROI at 1-2; ROI at 3;

<sup>34</sup> *See* ROI at 3-5; ROI at 4-5; ROI at 6; ROI at 7

1 timing and amount of bonus payments and the timing and amount of contributions made by  
2 AMR employees. *See supra* pp. 10-11. Indeed, many AMR employees who made contributions  
3 to federal candidates and committees, including AMBU-PAC, received no bonus payments at all,  
4 and, with respect to those AMR employees who did receive bonus payments, large disparities  
5 exist between the amount of contributions made and bonuses received, with bonus payments  
6 significantly exceeding employees' aggregate annual contributions by several thousand dollars  
7 *See Attachments C-E.*

8 Accordingly, this Office recommends that the Commission take no further action  
9 regarding Laidlaw, Laidlaw Transit, and AMR and close the file in MUR 5375.

10 **V. RECOMMENDATIONS**

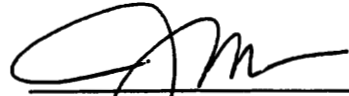
- 11 1. Take no further action regarding Laidlaw International, Inc., Laidlaw Transit, Inc.,  
12 and American Medical Response, Inc.
- 13 2. Close the file.
- 14 3. Approve the appropriate letters.

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16  
17 9/14/05  
18 Date

19  
20  
21 Lawrence H. Norton  
22 Lawrence H. Norton  
23 General Counsel

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Rhonda J. Vosdigh  
Rhonda J. Vosdigh  
Associate General Counsel for Enforcement

MUR 5375  
General Counsel's Report #2



Julie Kara McConnell  
Acting Assistant General Counsel

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